Customer No.: 31561
Application No.: 10/064,766
Docket NO.:8043-US-PA

REMARKS

Present Status of the Application

This is a full and timely response to the outstanding non-final Office Action mailed on June 2, 2005. The Office Action has rejected claims 1-4 and 8-10 as being unpatentable over Wu (US 6,482,744).

The Applicant has most respectfully considered the remarks set forth in this Office Action. Regarding the obviousness rejection, it is however strongly believed that the cited references are deficient to adequately teach the claimed features as recited in the amended claims. The reasons that motivate the above position of the Applicant are discussed in detail hereafter, upon which reconsideration of the claims is most earnestly solicited..

Discussion of the 35 U.S.C §103 Rejections

The Office Action rejected claims 1-4, 8-7 under 35 U.S.C. 103(a) as being unpatentable over Wu et al. (US 6,482,744).

The present invention teaches in claim 5, among other things, "...performing the etching process with a height of the susceptor in the etching chamber being adjusted to an optimum height that results in a minimum deviation of etching depth of the material layer in the etching process." To achieve such an advantage of performing the entire etching process at an optimum height and resulting with a minimum deviation of the etching depth of the material layer, the

present invention also teaches in claim 1 that "setting a height of the susceptor and performing an etching process at such a height; measuring deviations of etching depth at different locations under such a height; repeating the above two steps with respect to various heights so as to obtain several sets of corresponding data for different heights; and selecting the height resulting in a minimum deviation of etching depth as a height to perform a normal etching process". Accordingly, the solid etching by-products distribute more evenly on the inner wall of the etching chamber and fewer particles are generated since the etching process is conducted with a minimum deviation of the etching depth.

Wu, on the other hand, teaches setting the susceptor at a first predeteremined distance in reference to the upper electrode for performing a first etch at the first distance for a first predetermined time, and setting the susceptor at a second predetermined distance in reference to the upper electrode for performing a second etch at the second distance for a second predetermined time. It is undoubtedly from Wu's teaching that the etching process is conducted at least two different heights instead of one optimum height.

However, the Office still asserts that since Wu suggested that different height would affect that the etch rate differently over the substrate, it would have been obvious for one skilled in the art to select a height that results in minimum deviation of etching depth because etching at one height would be easier, shorter, and simpler process than etching at different heights. Applicants respectfully disagree with the Examiner's statement. If the invention were in fact obvious, because of its advantages, those skilled in the art surely would have implemented it by

now. The fact that those skilled in the art have not implemented the invention, despite its great advantages, indicates that it is not obvious. Applicants further submit that that the Examiner's statement is based upon Examiner's unsupported interpretation of the reference that could be made only by hindsight according to the teaching of the present invention. Additionally, such statements or implications that aspects of the invention are "basic knowledge" or common sense" are generally insufficient to satisfy the substantial evidence standard. See In re Zurko, 258 F. 3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001).

For at least these reasons, Applicant respectfully asserts that Wu fails to teach or suggest the present invention or to render claims 1 and 8 obvious. Since claims 2-4 and 9-10 are dependent claims, which further define the invention recited in claims 1 and 8, respectively, Applicants respectfully assert that these claims also are in condition for allowance. Thus, reconsideration and withdrawal of this rejection are respectively requested.

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CONCLUSION

For at least the foregoing reasons, it is believed that the presently pending claims 1-4, 8-10 are in proper condition for allowance. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

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Respectfully submitted,

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